



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Ref: ENF-W-NW

July 8, 2020

SENT VIA EMAIL
DIGITAL READ RECEIPT REQUESTED

Mr. Phil Hauck
City of Helena
phauck@helenamt.gov

Re: Responsive comments to the City of Helena's June 11, 2020 response to EPA's Letter of Violation

Dear Mr. Hauck,

Thank you for sending the City of Helena's (City) June 11, 2020 response (City's LOV Response) to the Environmental Protection Agency's (EPA) May 14, 2020 Letter of Violation (LOV). As we discussed when we spoke on June 11th, and in recent email exchanges, we look forward to meeting with the City to confer about the City's efforts to address our alleged violations and to discuss the potential for settlement of the EPA's claims set forth in the LOV. We are planning to meet with you via Microsoft Teams on July 23, 2020 from 1:30 to 3:30 pm. The Microsoft Team's video conferencing link and phone number information was recently sent to you in the meeting invitation.

We have reviewed the City's LOV Response and send this responsive letter to: (1) pose questions and set forth issues that we would like to discuss with the City during our upcoming meeting, (2) request additional documentation from the City, where necessary, and (3) propose actions for the City's consideration. Where documentation is requested, we ask that the City provide the information to us no later than July 16, 2020 to allow adequate time for us to review the submissions in advance of our upcoming meeting.

This letter is organized with subheadings that correspond to the LOV findings. Under each subheading, we repeat the City's response to the particular finding, transcribed from the City's LOV Response,¹ or, in some instances, we recategorize a response provided by the City to a different LOV finding subheading. Also under each subheading, we provide our responsive comments, questions, and/or documentation requests. Finally, we provide a corresponding proposed action for the City's consideration along with a timeline for implementing the action.

¹ For ease of reference, the City cross-referenced the Corrective Action numbering system that it outlined in its January 22, 2018 response to EPA's September 2017 Pretreatment Audit.

Ultimately, should we reach agreement on a set of actions designed to fully address the findings in our LOV, we would embody that agreement in an Administrative Order on Consent.

1. Failure to update its local limits, in violation of 40 C.F.R. 403.5(c)(1) and Part I.E.b of the NPDES Permit

City's LOV Response – Status for Corrective Action #4

The implementation of local limits was delayed due to the anticipated new MPDES permit but the new permit has been delayed again by the State of Montana. A detailed re-evaluation of the local limits was submitted to Mr. Al Garcia at US EPA Region 8 on Feb 5, 2019. The City has been waiting for comments from Mr. Garcia. If desired by the EPA, the City will implement the updated local limits and update the city resolution and will follow appropriate EPA and City public comment periods. Attached to this letter is a resubmittal of updated local limits.

EPA's responsive comments to Corrective Action #4

EPA received the City's re-evaluated local limits submittal on February 12, 2019. Mr. Garcia responded to City 's draft local limits on April 15, 2019 with comments to ensure the draft local limits would be approvable. We again provide that April 15, 2019 response as an attachment.

As additional background, the EPA approved updated local limits for the City in 2002 ("City's Current Local Limits"). The EPA's 2009 Audit found the City had not updated its local limits since 2002. The EPA's 2009 Audit identified the need to update local limits as a corrective action. The City provided a technical memorandum to EPA on June 28, 2013 in response to the October 1, 2012 NPDES permit reissuance and the 2009 Audit Report. The City's 2013 technical memorandum stated that its local limits needed to be updated and proposed a delay in development and implementation because the City was in the process of evaluating and implementing water and POTW treatment process modifications which would reduce copper, zinc, total nitrogen, and total phosphorus. The City proposed a schedule to provide a first draft of local limits to EPA by February 1, 2016.

The City submitted the first draft of its proposed local limits to the EPA on April 21, 2016 and EPA provided comments designed to ensure the local limits were approvable. In response, the City provided a second draft of proposed local limits to EPA on November 21, 2016. The November 21, 2016 submittal included correspondence that contained the City's response to the EPA's comments (Part I) and the current steps taken by the City to implement local limits (Part II). The City calculated a zero discharge maximum allowable industrial loading (MAIL) for copper, which would have resulted in an economic disadvantage for the service area. The City requested in Part II of the correspondence that it gather additional copper data to supplement the uncontrollable sector (domestic and commercial) dataset and to perform the system-wide copper reduction to minimize the copper loading to the POTW, which included water system sampling, watershed sampling, water distribution system corrosion control, and POTW optimization and process modification. The City indicated to the EPA that it would update the municipal ordinance and submit it with the final draft of the local limits on April 21, 2017.

The EPA's September 11-13, 2017 Audit found the City had not updated its local limits. The EPA's 2017 Audit identified the continued need for the City to update local limits as a corrective action. On February 14, 2018, the City indicated that MDEQ was in the process of writing the City's new NPDES

Permit and that once the City received the permit with new discharge limits, the City would continue working on the development of the local limits. On February 5, 2019, the City sent their draft local limits to EPA for approval. On April 15, 2019, the EPA provided comments to the City's draft local limits (See attachment). The EPA has not received the final draft of the City's local limits.

Proposed action to address this LOV Finding

First, submit the draft local limits, as revised based on EPA's April 15, 2019 comments, to EPA for approval by December 31, 2020. Next, within 180 days after the effective date of the upcoming renewal of the City's NPDES Permit, the City shall submit to the EPA a technical evaluation of its local limits based on the NPDES permit reissuance conditions as required per 40 C.F.R. 122.44(j)(2)(ii). Prior to submission, the City shall provide the public an opportunity to comment on the proposed local limits and shall conduct a technical evaluation in compliance with 40 C.F.R. § 403.5(c)(3) and part I.E.b of the NPDES Permit.

2. Failure to update the pretreatment ordinance as a full and effective legal authority, in violation of 40 C.F.R. 403.8(f)(1) and Part I.E.a of the NPDES Permit

City's LOV Response – Status for Corrective Action #2

The City of Helena adopted an updated ordinance in September 2019. The new ordinance is attached.

EPA's responsive comments to Corrective Action #2

Thank you for providing a copy of the City's recently updated pretreatment ordinance. However, additional information is required for the EPA to be able to review and potentially approve this ordinance modification.

As background, on April 15, 2019, the City submitted draft updates to its rules and regulations in an effort to address the deficiencies described in the EPA's 2017 audit report. On June 17, 2019, the EPA sent two emails to the City indicating that the draft updates to the City's rules and regulations were approvable and that the City should take the updates to the rules and regulations to the Helena City Council for their first approval reading and public participation meeting (See attachments). The June 17, 2019 emails also indicated that the City needed to submit the following information to EPA:

1. A statement of basis for the proposed modification;
2. An attorney's statement that confirms the modified legal authority will:
 - a. Allow the municipality to fully implement and enforce Pretreatment Standards and Requirements,
 - b. Be processed and adopted by administrative procedures established in local laws and regulations and will include an opportunity for the public to participate,
 - c. Assure the changes will be in compliance with state laws and established standards and requirements in the municipality's NPDES discharge permit.
3. A copy of the draft legal authority that shows additions (by means of **CAPITALIZATION AND BOLDING**) and deletions (by means of ~~strikethroughs and bolding~~) at a minimum; and,
4. A copy of the draft legal authority showing all changes as they will look in final format.

The City has not submitted the documents referenced above, which are required before EPA can consider final approval of the ordinance modification.

Proposed action to address this LOV finding

By September 1, 2020, the City shall submit a pretreatment ordinance to the EPA (the September 2019 update) along with all legal authorities required by 40 C.F.R. § 403.8(f)(1) and the following:

1. A statement of basis for the proposed modification;
2. An attorney's statement that confirms the modified legal authority will:
 - a. Allow the municipality to fully implement and enforce Pretreatment Standards and Requirements,
 - b. Be processed and adopted by administrative procedures established in local laws and regulations and will include an opportunity for the public to participate,
 - c. Assure the changes will be in compliance with state laws and established standards and requirements in the municipality's NPDES discharge permit.
3. A copy of the draft legal authority that shows additions (by means of **CAPITALIZATION AND BOLDING**) and deletions (by means of ~~striketroughs and bolding~~) at a minimum; and,
4. A copy of the draft legal authority showing all changes as they will look in final format.

3. Failure to develop an Intergovernmental Agreement (IGA) with the Fort Harrison military base, in violation of 40 C.F.R. 403.8(f)(1) and Part I.E.a of the NPDES Permit

City's LOV Response – Status for Corrective Actions #3

According to an email received on January 31, 2019 from Michelle DeGrandi, Environmental Attorney-RPLG, Department of Veterans Affairs, the VA follows local laws for which congress has waived their sovereign immunity. The Clean Water Act requires compliance with state/local requirements related to the control and abatement of water pollution.

The City of Helena believes our ordinance provides the needed authority to implement the Pretreatment Program at Fort Harrison; however, a draft IGA was sent to Al Garcia on 4/30/19 requesting approval of the language but we have not received a response. The draft IGA is attached.

EPA's responsive comments to Corrective Action #3

Thank you for resubmitting the draft IGA with Fort Harrison. EPA received the draft IGA email on 4/30/19, but did not provide written comments. EPA reviewed the draft IGA and provides its comments to the City in an attached track-changes document.

Proposed action to address this LOV finding

EPA reviewed the 4/30/19 draft IGA and provides its responsive comments to the City in the attached document. Within 60 days after addressing EPA's written comments on the draft IGA, the City shall enter into an IGA with the Fort Harrison military installation to give the City the authority to implement the City's Pretreatment Program fully within the Fort Harrison military installation. The City shall provide a copy of the final IGA executed with the Fort Harrison military installation no later than 10 days after it is entered.

4. Failure to include required conditions in industrial user (IU) permits, in violation of 40 C.F.R. 403.8(f)(1)(iii)(B) and Part I.E.a.vi of the NPDES Permit

City's LOV Response – Status for Corrective Action #8

The language incorporating the authority to administratively extend permits has been removed from the boiler plate permit template. That language is NOT in either of the current permits.

EPA's responsive comments to Corrective Action #8 and documentation request

Thank you for the update on this corrective action. By July 16, 2020, please provide us with final, current copies of both the Decorative Industrial Plating (DIP) and Montana Rail Link (MRL) industrial user permits

City's LOV Response – Status for Corrective Action #9

The proposed DIP limits for their new industrial discharge permit with the City are included in the attached documents. See also local limits comments on Corrective Action Item 4.

EPA's responsive comments to Corrective Action #9

The EPA has reviewed the documents provided by the City. It is our position that the City has not modified the DIP industrial user permit to address the issues identified in the EPA's 2017 Audit. Specifically, the proposed DIP industrial user permit includes local limits that have not yet been finalized by the City or approved by EPA. See table below for DIP draft permit effluent limits. For example, the Arsenic daily max limit in the draft DIP industrial user permit is 1.07 mg/L. However, the City's Current Local Limits set the local limit for arsenic as 0.97 mg/L.

Effluent limitations

Parameter	Daily Max. (mg/l)	Monthly Avg. (mg/l)
Arsenic	1.07	1.07
Cadmium - Total	0.11	0.07
Chromium - Total	2.77	1.71
Chromium III	2.77	1.71
Chromium VI	1.57	1.05
Copper - Total	3.38	0.022 lb/day
Cyanide - Total	1.20	0.65
Lead - Total	0.69	0.43
Mercury	0.041	0.22
Molybdenum	3.66	4.39
Nickel - Total	3.98	2.26
Selenium	2.84	0.40
Silver - Total	0.43	0.24
Zinc -Total	2.25	1.48
pH (must be kept between 5.5 and 10.5)		
Total Toxic Organic	2.13	NA

The table below shows the City's Current Local Limits found in Resolution 11726 to the City's ordinance.

Table 1 – City of Helena Local Limits

Pollutant	Symbol	Local Limits (mg/L)
Arsenic, Total	As	0.97
Cadmium, Total	Cd	0.6
Chromium III	Cr III	120.78
Chromium VI	Cr VI	5.44
Chromium, Total	Cr	NA
Copper, Total	Cu	18.56
Lead, Total	Pb	0.54
Mercury, Total	Hg	0.42
Molybdenum, Total	Mo	10.28
Nickel, Total	Ni	9.61
Selenium, Total	Se	2.44
Silver, Total	Ag	5.32
Zinc, Total	Zn	4.63

City's LOV Response – Status for Corrective Action #10

The DIP Industrial User Permit will be updated to include a Daily Maximum Permit limit of 2.13 mg/L in the Effluent Limitations portion of the permit following adoption of the new local limits. See also local limits comments on Corrective Action Item 4.

EPA's responsive comments to Corrective Action #10

The DIP industrial user permit must be modified and issued by August 15, 2020 to include the metal finishing total toxic organics (TTO) limit of 2.13 mg/L, as required in 40 C.F.R. 433.17. The City should not continue to wait until the new local limits are approved to issue the TTO limit for DIP.

City's LOV Response – Status for Corrective Action #11

The DIP permit will be reissued as necessary following adoption of the new local limits. See also local limits comments on Corrective Action Item 4.

EPA's responsive comments to Corrective Action #11

First, the DIP industrial user permit must be modified and issued by August 15, 2020 to include monitoring requirements for TTOs. The City should not continue to wait until the new local limits are approved to modify DIP industrial user permit to include the TTO monitoring requirements.

Second, the DIP draft permit has a section that references “40 CFR 469.13 (c) (d)” which is a requirement for the Electrical and Electronic Components Point Source Category. DIP is not subject to the Electrical and Electronic Components Point Source Category, so this reference must be removed from the DIP industrial user permit. Instead, the DIP industrial user permit must reference 40 CFR

433.12 (a) and (b) because DIP is a metal finisher. Please note that the metal finishing toxic organic management plan (TOMP) and a solvent management plan (SMP) are the same plan as indicated in 40 CFR 433.12. Therefore, the DIP permit should only have one requirement for the TOMP. The duplicative section below must be removed from the DIP draft permit:

“Solvent Management Plan

In accordance with 40 CFR 433.12 (a) and 40 CFR 469.13 (c) (d), in lieu of monitoring for Total Toxic Organics, the Permittee shall make the following certification statement with each monitoring report submittal: ““Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for total toxic organics (TTO), I certify that, to the best of my knowledge and belief, no dumping of concentrated toxic organics into the wastewaters has occurred since filing the last discharge monitoring report. I further certify that this facility is implementing the solvent management plan submitted to the control authority.” The Permittee shall also submit the Solvent Management Plan (SMP) with each monitoring report.”

Third, the DIP industrial user permit must include the requirements for the Solvent Management Plan in 40 CFR 433.12(b) which include: the toxic organic compounds used; the method of disposal used instead of dumping, such as reclamation, contract hauling, or incineration; and procedures for ensuring that toxic organics do not routinely spill or leak into the wastewater.

The following website has guidance on the development of a TOMP or SMP:

<https://www3.epa.gov/npdes/pubs/owm0021.pdf>

EPA’s comments on Corrective Action #12

As applicable to this LOV finding subheading, EPA addresses Corrective Action #12, although not identified here by the City’s LOV Response. Finding #12 in the audit report indicated “The Decorative Industrial Plating permit allows for grab sampling for compliance purposes. The grab sample at the facility does not appear to be representative of the 8-hour discharge from the facility. The permit rationale does not provide adequate justification regarding representative sampling techniques.”

Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless the Control Authority authorizes time-proportional sampling or grab sampling. **Where the Control Authority authorizes time-proportional sampling or grab sampling, the samples must be representative of the discharge, and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities.** The DIP industrial user permit allows grab samples for metals without supporting documentation for this decision. It is the EPA’s position that the metal grab sample requirement does not appear to be representative of the 8-hour discharge from the facility. The permit fact sheet for DIP and the revised Sampling and Analysis Plan do not provide adequate justification regarding why metal grab samples are representative sampling for DIP’s discharge.

Proposed actions to address this LOV finding

The City shall modify the DIP industrial user permit and reissue it by August 15, 2020 to include the following:

- the applicable Pretreatment standards which must include the more stringent limits between the categorical metal finishing Pretreatment Standards found in 40 C.F.R. 433.17 and the City's Current Local Limits found in Resolution 11726 to the Ordinance.
- the metal finishing TTO limit of 2.13 mg/L and the TTO monitoring requirements. Please remove the duplicate Solvent Management Plan requirement found in the draft DIP industrial user permit.
- the requirements for the Solvent Management Plan in 40 CFR 433.12(b) which include: the toxic organic compounds used; the method of disposal used instead of dumping, such as reclamation, contract hauling, or incineration; and procedures for ensuring that toxic organics do not routinely spill or leak into the wastewater.
- to require that samples collected from DIP be composite samples for metals and grab samples for pH, cyanide and TTOs. Alternatively, the City must adequately document in the Industrial User file the rationale for alternative sampling for metals to show that the sampling is representative of the DIP discharge.

At a later date, after the City adequately updates its local limits and those limits are approved by EPA, the City shall modify the DIP industrial user permit to include the updated local limits. The City shall complete the DIP permit modification mentioned in the preceding sentence within 30 days of the effective date of the updated local limits.

5. Failure to identify and locate all possible IUs that might be subject to the City's pretreatment program and to update this information yearly, in violation of 40 C.F.R. 403.8(f)(2)(i) and Part I.E.a.i of the NPDES Permit

City's LOV Response – Status for Corrective Action #5

The City of Helena only has two IUs. Both are currently permitted with the City. We may need additional guidance as to the additional requirements of the code.

EPA's responsive comments to Corrective Action #5

See responsive comments to Corrective Action #5 on page 10 below.

City's LOV Response – Status for Corrective Action #6

The City of Helena continues reviewing new business licenses and Industrial Waste Survey forms to see if they are a concern.

EPA's responsive comments to Corrective Action #6 and request for documentation

Thank you for providing a brief description of what the City has been doing to identify new industrial users. As discussed in the 2017 EPA Audit, the City had developed an IU inventory of its service area that needed to be updated and maintained. The listing of IUs in the service area generated in the JobCal program did not appear to be current. The listing provided the facility name, address, and a broad characterization of the IUs. Based on the EPA's review of available IU survey and inspection records

during the 2017 EPA Audit, the EPA determined that the City has not invested resources to use the methods discussed in the City's procedure for the industrial user inventory. Based on that procedure, the City is required to update and maintain the IU inventory based on available tools to the City such as the industrial waste survey, drive by inspections, facility inspections, etc.

The EPA requests more information for this corrective action. By August 1, 2020, please provide a list of the new business in the City of Helena since September 2017 and provide a copy of the Industrial Waste Survey forms sent to these facilities. Please indicate how the City reviewed the forms, what information the City considers "of concern," and indicate if the City identified any new significant industrial users. Please indicate if the City performed any inspections of new business since September 2017 and, if so, provide a copy of the inspection reports for new business. Additionally, please provide the list of dental amalgam facilities in the service area and the City's actions to implement the dental amalgam rule in the service area.

Proposed action to address this LOV finding

Within 270 days after the effective date of the Administrative Order on Consent, the City shall provide the EPA a list of all IUs contributing pollutants to the POTW (IU Inventory). For each IU, the City shall include in the IU Inventory:

- a. the name of the IU;
- b. the location of the IU;
- c. the type of business conducted by the IU;
- d. the date the IU was inspected, if required by the Industrial Waste Survey Procedure;
- e. the date the IU was sampled, if required by the Industrial Waste Survey Procedure;
- f. the character and volume of pollutants contributed by the IU to the POTW;
- g. the characterization/categorization of the IU with respect to applicable pretreatment requirements, including whether the IU is subject to Categorical Pretreatment Standards, is a non-categorical Significant Industrial User, requires best management practices, or is not significant to pretreatment;
- h. if any IU has been identified as subject to Categorical Pretreatment Standards or as a non-categorical Significant Industrial User, provide the date the IU was issued an SIU permit; and
- i. a report of each inspection conducted.

6. Failure to identify the character and volume of pollutants contributed by IUs and to update this information yearly, in violation of 40 C.F.R. § 403.8(f)(2) (ii) and Part I.E.a.i of the NPDES Permit

EPA's comments to Corrective Action #6

As applicable to this LOV finding subheading, EPA addresses Corrective Action #6, although not identified here by the City's LOV Response. See comments on pages 8-9 above.

City's LOV Response – Status for Corrective Action #19

During annual inspections, City of Helena staff evaluates DIP for chemicals to determine that the facility is not discharging any total toxic organics found in 40 CFR 433. DIP has been submitting the Toxic Organic Management Plan and the TTO certification statement throughout 2018. The DIP Industrial

User Discharge permit will be updated to require SDS sheets be kept on file at the facility and to notify the City with each quarterly report of any new chemicals used in the process.

EPA's responsive comments to Corrective Action #19

See responsive comments to Corrective Action #19 on page 12, below.

7. Failure to notify IUs of applicable Pretreatment Standards and any applicable requirements under subtitles C and D of the Resource Conservation and Recovery Act (RCRA), in violation of 40 C.F.R. § 403.8(f)(2)(iii), Part I.E.a.i of the NPDES Permit and, as to the RCRA notifications, Part I.E.a.x of the NPDES Permit

City's LOV Response – Status for Corrective Action #5

The City of Helena only has two IUs. Both are currently permitted with the City. We may need additional guidance as to the additional requirements of the code.

EPA's responsive comments to Corrective Action #5 and request for clarification

The 2017 Audit found that the City's industrial waste survey procedure did not address the regulatory obligation to notify Industrial Users of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. As identified in the 2017 audit, the City's IU inventory procedure needs to include a notification component for IUs in the service area; this can be accomplished by a variety of methods, including but not limited to, follow up letters to inspections or survey reviews, providing a copy of the inspection report to the IU, etc. By July 16, 2020, please clarify what additional guidance is still sought by the City, if any.

Proposed action to address this LOV finding

By August 15, 2020, the City shall update and submit to the EPA the procedures that the City will use to notify Industrial Users identified under 40 C.F.R. § 403.8(f)(2)(i), of applicable Pretreatment Standards and any applicable requirements under sections 204(b) and 405 of the Act and subtitles C and D of the Resource Conservation and Recovery Act. By August 15, 2020, the City shall implement that procedure and notify all such Industrial Users.

8. Failure to conduct sampling and inspections with sufficient care to produce admissible evidence in enforcement proceedings or in judicial actions and to sample each Significant Industrial User (SIU) at least once per calendar year, in violation of 40 C.F.R. 403.8(f)(2)(vii) and Part I.E.a.ii of the NPDES Permit

City's LOV Response – Status for Corrective Action #12

A revised Sampling and Analysis Plan was prepared by CDM Smith and is included in the attached documents.

EPA's responsive comments to Corrective Action #12

See responsive comments Corrective Action #12 on page 7, above.

City's LOV Response – Status for Corrective Action #13

The City of Helena completed this shortly after our audit and will continue to do so on an annual basis.

EPA's responsive comments to Corrective Action #13 and request for documentation

Thank you for providing a description of what the City has been doing to sample pH at DIP. The EPA is interested in getting more information for this corrective action. By July 16, 2020, please provide the pH sampling records performed by the City at DIP since September 2017. Please also provide the accompanying pH calibration records.

City's LOV Response – Status for Corrective Action #14

MRL analyzes the sample from their process tank before it is discharged to the collection system. No additional water is added to the tank between the time a sample is collected and the water is discharged. Operating in this manner meets the requirement to sample during discharge.

EPA's responsive comments to Corrective Action #14

See responsive comments to Corrective Action #14 on page 13, below.

EPA's comments on Corrective Action #17 and request for documentation

Although the City did not reference Corrective Action #17 in the City's LOV Response, we offer comments here as applicable.

The 2017 Audit found that the City's inspection reports were not adequate to determine compliance with Pretreatment Standards and Requirements. The SIU inspection reports were not based on current information gathered during the facility inspection. The inspection reports failed to contain an evaluation of the facility's potential for slug discharge control and failed to contain information regarding the facility's discharge practices to ensure compliance sampling was based on representative sampling for the time period at issue. Based on the EPA's review of City inspection report records, the inspection reports were simply copied and pasted from the previous year dating back at least three years. By July 16, 2020, please provide the EPA with the DIP and MRL inspection reports performed in 2018, 2019 and 2020.

City's LOV Response – Status for Corrective Action #18

A revised Sampling and Analysis Plan was prepared by CDM Smith and is included in the attached documents.

EPA's responsive comments to Corrective Action #18

Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless the Control Authority authorizes time-proportional sampling or grab sampling. **Where the Control Authority authorizes time-proportional sampling or grab sampling, the samples must be representative of the discharge, and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities.** The EPA's original corrective action #18 from the Audit was that grab sampling was not representative of the facility's 8-hour discharge. The City responded that this item was addressed in the revised Sampling and Analysis Plan. However, the EPA disagrees, as the revised Sampling and Analysis Plan

still allows grab samples for metals to be collected from DIP and it does not provide adequate justification regarding why metal grab samples are representative sampling for DIP's discharge. For further information about EPA's review of the revised Sampling and Analysis Plan, see Corrective Action #20 comments on page 12, below.

EPA's comments on Corrective Action #19 and request for documentation

As applicable to this LOV finding subheading, EPA addresses Corrective Action #19, although not identified here by the City's LOV Response. Finding #19 from the Audit indicates that "The City has not evaluated Decorative Industrial Plating to determine if it discharges total toxic organics in quantities that may impact the TTO daily maximum limit found in 433.17. The facility has an organized binder with the SDS sheets of its chemicals used in process."

By July 16, 2020, please provide the DIP inspection reports performed by the City during 2018 and 2019 and DIP self-monitoring reports for 2018, 2019 and 2020. The DIP industrial user permit must be modified by August 15, 2020 to include the requirement that SDS sheets be kept on file at the facility and the requirement to notify the City with each quarterly report of any new chemicals used in the process. In the event that a CIU with TTO limits has implemented a TOMP, the EPA recommends that the City sample the CIUs for TTOs once during the permit cycle to ensure that they are complying with TTO limits and ensure that the TOMP is still effective. Although CIUs are allowed to reduce their sampling frequency through the certification and submittal of a TOMP, the regulations at 40 C.F.R. §403.8(f)(2)(v) require the POTWs to ensure that CIUs are in compliance with their permits, independent of information supplied by the CIU. The EPA provides further guidance on TTO sampling in Section 3.2 of the *Industrial User Inspection and Sampling Manual for POTWs (EPA-831-B-17-001)*, <https://www.epa.gov/sites/production/files/2017-01/documents/iuinspect.pdf>. Since DIP has implemented a TOMP, the EPA recommends that the City sample DIP for TTOs once during the permit cycle to ensure that they are complying with TTO limits and ensure that the TOMP is still effective. By July 16, 2020, please provide the City's latest TTO sample results for the DIP discharge.

City's LOV Response – Status for Corrective Action #20

Please see updated sampling and analysis plan, attached.

EPA's responsive comments to Corrective Action #20

Thank you for providing the City's revised Sampling and Analysis Plan. At a minimum, the revised Sampling and Analysis Plan must be updated to reflect the issues identified in EPA's responsive comments to Corrective Action #18, on pages 11 and 12 above. The EPA is currently reviewing the remainder of the revised Sampling and Analysis Plan and will provide additional comments if necessary.

Proposed actions to address this LOV finding

- (a) Within 90 days after the effective date of the Administrative Order on Consent, the City shall submit to the EPA a sampling procedure that ensures that:
 - the City collects random and independent samples of effluent from all SIUs for all permitted pollutants at least annually, except where the City's legal authority and/or 40 C.F.R. § 403.8(f)(2)(v) requires otherwise, to independently verify compliance or identify noncompliance,

- all samples meet the requirements of 40 C.F.R. part 136 (e.g., holding time, proper sample type, chemical or temperature preservation, analytical techniques, etc.),
 - required records listed in 40 C.F.R. § 403.12(o) are created and maintained, and
 - where necessary, the procedure addresses random and independent sampling of non-SIUs.
- (b) Within 60 days after the effective date of the Administrative Order on Consent, the City shall submit to the EPA an inspection procedure that ensures that the City properly collects and maintains inspection information. The procedure shall address, at a minimum, inspection processes, note taking, photographic information, and inspection reports.
- (c) The revised Sampling and Analysis Plan must be revised to require that samples collected from DIP be composite samples for metals and grab samples for pH, cyanide and TTOs. Alternatively, the City must document the rationale for alternative sampling for metals to show that the sampling is representative of the DIP discharge.
- (d) The DIP industrial user permit must be modified by August 15, 2020 to include the requirement that SDS sheets be kept on file at the facility and the requirement to notify the City with each quarterly report of any new chemicals used in the process.

9. Failure to analyze a self-monitoring report, identify an IU violation and enforce against the IU, in violation of 40 C.F.R. 403.8(f)(2)(iv) and 40 C.F.R. 403.8(f)(2)(vii), and Part I.E.a.iv and Part I.E.a.v of the NPDES Permit

EPA's comments to Corrective Action #14

As applicable to this LOV finding subheading, EPA addresses Corrective Action #14, although not identified here by the City's LOV Response. Finding #14 in the audit report indicated "Montana Rail Link is gathering non-reportable data from the final batch tank and submitting to the City for permission to discharge. The facility is not following up with sampling during discharge at the monitoring point. The data gathered from the final batch tank is not an actual discharge to the City's sanitary sewer system and is not enforceable."

The 2017 Audit found that MRL sampled the final batch tank prior to discharge and submitted the results to the City for permission to discharge. MRL did not sample the effluent during the actual discharge. The sampling from the final batch tank prior to discharge does not meet the regulatory requirement to sample during a discharge event and is not considered to be reportable. MRL is free to sample the batch tank before it is discharged. However, MRL is required to sample during the discharge event to show what is being discharged to the City. MRL cannot use the pre-discharge sample as their discharge compliance sample. Batch tanks can receive wastewater after they are sampled changing the pollutant concentration in the tanks. Also, chemical reactions could occur in batch tanks due to residence time or temperature changes that could change the pollutants concentrations in the tanks. For sampling at an incorrect location, incorrect sample type, inadequate sampling frequency, incorrect collection techniques (unintentional – compliance maintained), the City's Enforcement Response Plan (ERP) indicates that the appropriate enforcement response is a LOV for the first time it occurs and a NOV, Cost Reimbursement, Civil Penalty if the sampling issue is reoccurring.

City's LOV Response – Status for Corrective Action #16

MRL personnel was out on medical leave during the reporting period and MRL did not discharge any process water in that month so a notice of violation was not processed by the City of Helena.

EPA's responsive comments to Corrective Action #16

The City's ERP does not allow enforcement exemptions if facility personnel are on medical leave. The City must follow its ERP for any violations identified during the review of self-monitoring reports. For first time late reports, where compliance is maintained, the ERP indicates that the appropriate enforcement response is a phone call to the facility or a Letter of Violation requiring the late report to be submitted within 5 days.

Proposed actions to address this LOV finding

- (a) Within 30 days after the effective date of the Administrative Order on Consent, the City shall submit to the EPA a procedure for receiving and analyzing reports and other notices from SIUs, including but not limited to periodic self-monitoring reports, 24-hour noncompliance notifications, 30-day resampling submittals, upset notifications and reports, bypass notifications and reports, and other required written reports or verbal notifications.
- (b) The City shall take an enforcement actions against MRL in accordance with its ERP for the discharge sampling violation identified above. Within 60 days after the effective date of the Administrative Order on Consent, the City shall submit to the EPA a list of IU violations and corresponding enforcement actions and the date each enforcement action was taken.

10. Failure to have “qualified personnel” to implement the pretreatment program, in violation of 40 C.F.R. 403.8(f)(3) and Part I.E.a.vii of the NPDES Permit

City's LOV Response – Status for Corrective Action #16 (sic.)

The City is currently utilizing internal resources and a consulting firm to ensure qualified personnel carry out the authority and procedures. See attached consultant contract(s).

EPA's offered comments on Corrective Action #1 and additional questions

The City's response was labeled as Corrective Action #16 – Status for Corrective Actions; however, it appears that that was a typo and the City meant Corrective Action #1. Thank you for providing the update on the resources the City is using to implement the pretreatment program. By July 16, 2020, please answer the following questions:

- Is the City planning to hire a Pretreatment Coordinator in the future?
- Is the contractor performing all pretreatment responsibilities, including but not limited to, industrial waste survey review, issuing and modifying industrial user permits, review of IU self-monitoring reports, sampling of IUs, and enforcement?
- What pretreatment responsibilities is the City personnel conducting?

Proposed action to address this LOV finding

EPA needs to understand the questions above to propose a corrective action.

Please contact me at 303-312-6407 or Llamozas.emilio@epa.gov if you have any questions regarding this letter.

Sincerely,

**EMILIO
LLAMOZAS**

Digitally signed by EMILIO
LLAMOZAS
Date: 2020.07.08 09:23:03
-06'00'

Emilio Llamozas
NPDES and Wetlands Enforcement Section
Enforcement and Compliance Assurance Division

Enclosures:

1. April 15, 2019 email - City of Helena Draft Local limits
2. June 17, 2019 email - RE: Pre-Treatment Audit - Section 4.0 Comment 2. RE: Ordinance
3. June 17, 2019 email - RE: Pre-Treatment Audit - Section 4.0 Comment 2. RE: Ordinance – reply
4. EPA's July 7, 2020 comments on the Fort Harrison military installation IGA

cc: Mr. Mark Fitzwater, Wastewater Treatment Superintendent (via email)
Mr. Matthew Culpo, Stormwater Engineer (via email)
Mr. Ryan Leland, City Engineer (via email)